

SECOND DIVISION

[G.R. No. 120920, February 12, 1998]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CRISTITUTO CORTES Y PALCATAN AND ARIEL CORTES Y
PLEBIAS, ACCUSED-APPELLANTS.**

DECISION

PUNO, J.:

Appellants Cristituto Cortes and Ariel Cortes seek a review of the Decision of the RTC of Cebu, Branch 28, Mandaue City, convicting them of murder.^[1] Cristituto was sentenced to suffer the penalty of reclusion perpetua while Ariel was imposed the indeterminate penalty of 10 years and 1 day of prision mayor as minimum to 17 years, 4 months and 1 day of reclusion temporal as maximum in view of his voluntary surrender. They were also ordered to pay jointly and severally the heirs of the victim, Juanito Perez, the sum of ₱50,000.00 and the cost of suit proportionately.

The Information against the accused reads:

"The State accuses CRISTITUTO CORTES Y PALCATAN and ARIEL CORTES Y PLEBIAS of the crime of Murder committed as follows:

"That on or about the 6th day of September 1992, in the City of Mandaue, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with deliberate intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab one Juanito Perez with a kitchen knife, thereby inflicting upon the latter mortal wounds at his body which caused his death soon thereafter.

"CONTRARY TO LAW."

Accused Ariel bargained to plead guilty to the crime of homicide. His offer was rejected by the prosecuting fiscal and the relatives of Juanito Perez. Both accused then pled not guilty to the charge of murder and were tried.

The evidence for the prosecution shows that on September 6, 1992 at about 12:30 a.m., Roel Flores, Renato Perez and Juanito Perez were drinking beer in front of Helen's store located inside the Mandaue City Public Market. Less than three arms length away was the store of Emma Cortes, the mother of accused Ariel.

After a bottle of beer, Roel Flores and Juanito Perez went across the store of Helen to answer the call of nature. They stood three arms length away from each other. Accused Ariel was then lying on a bamboo bench outside Emma's store and talking to his co-accused Cristituto, his cousin. All of a sudden, accused Ariel stood up, approached Juanito from behind, and stabbed him twice with a kitchen knife. Juanito sustained wounds on his left armpit. He ran but was chased by accused Cristituto who boxed him on the right jaw. The victim slumped on the ground. Roel Flores rushed

towards the victim and loaded him in a van which brought him to the Southern Island Medical Center. The effort was futile. Juanito died.

A balut vendor, Servillano Remolizan, testified that he passed by Emma's store before the incident happened. He overheard accused Ariel say to his co-accused Cristituto: "[i]f a young fellow by the name of Juanito will pass by, I will stab." Cristituto replied: "[i]f someone will come to the aid of that fellow, I will also stab that person."^[2] Later, he saw a young man come, urinate and while relieving himself was stabbed twice by accused Ariel. The victim ran, was pursued and boxed by accused Cristituto. The two ran away and Roel Flores assisted the victim. He came to know that the victim was Juanito Perez.

Accused Ariel admitted stabbing Juanito. He claimed, however, that he defended his co-accused Cristituto who was being mauled by the victim. Cristituto fell in a canal and lost consciousness. He shouted at the victim who tried to attack him. He stabbed the victim twice with a knife and then surrendered to the police.

Accused Cristituto corroborated Ariel's story. He said the victim arrived at the store and immediately choked him. The victim then boxed him at his midsection. He lost consciousness which he regained only in the police station. He presented a medical certificate dated September 28, 1992 issued by Dr. Allan Son of the Southern Islands Hospital to prove his injuries.^[3]

The trial court convicted the accused of murder. It found conspiracy. It ruled there was treachery. It appreciated the mitigating circumstance of voluntary surrender in favor of accused Ariel.

In this appeal, the appellants contend:

I

The trial court erred in not appreciating in favor of accused-appellant Ariel Cortes the justifying circumstance of defense of a relative despite its being proved by clear and convicting evidence.

II

The trial court erred in finding that accused-appellants conspired to kill the victim.

III

The trial court erred in finding accused-appellants guilty beyond reasonable doubt of the crime of murder.

We find no merit in the appeal.

The trial court did not err in rejecting appellants' plea for exoneration on the ground of defense of a relative. For this plea to succeed, the appellants must prove: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) in case the provocation was given by the person attacked, the one making the defense had no part therein.^[4]

Our running jurisprudence is that the unlawful aggression of the victim must be clearly established by evidence.^[5] In the case at bar, the appellants miserably failed to prove the unlawful aggression of the victim. On the contrary, two witnesses - Roel Flores and